



***EXECUTIVE
DIRECTOR'S
REPORT***

November 7, 2018

A.

ADMINISTRATIVE MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<u>1. Workforce Succession Planning</u> Tim Corcoran; Administration Committee	Participate in DMV's effort to update the Department's Workforce and Succession Plan, applicable also to the NMVB. The plan will be aimed at enhancing recruitment practices, reducing the length of time to hire, developing existing staff for upward mobility, and ensuring effective knowledge transfer occurs within the Department.	January 2019	In progress. DMV's Enterprise Risk Management Division is developing proposed initiatives for consideration by DMV's executive team.
<u>2. Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074 and 3065/3075 (Filing of Statutorily Required Schedules and Formulas)</u> Danielle Phomsopha, Eugene Ohta; Administration Committee	Annually letters are sent to all licensed manufacturers and distributors requesting copies of their current delivery and inspection obligations ("PDI"), PDI schedule of compensation, and warranty reimbursement schedule or formula.	January 2019	In progress. A status report concerning manufacturer and distributor compliance will be presented at the January 24, 2019, General Meeting.
<u>3. Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	January 2019	In progress. The revised Guide will be presented at the January 24, 2019, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
BOARD DEVELOPMENT COMMITTEE			
<u>1. Schedule Board Member Education Presentations</u> Danielle Phomsopha; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	November 2018	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the November 7, 2018, General Meeting.
<u>Solon C. Soteras Employee Recognition Award Recipient</u> Tim Corcoran; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	August 2018	<u>Completed</u> At the August 13, 2018, General meeting, the members selected Makalla Turner as the recipient of the Employee Recognition Award.
FISCAL COMMITTEE			
<u>1. Quarterly Fiscal Reports</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	Quarterly fiscal reports will be provided to the Committee and scheduled for upcoming Board meetings.	Ongoing	In progress. The 1 st , 2 nd and 3 rd quarter reports for fiscal year 2017-18 were presented at the January 24, March 13, and August 13, 2018, General Meetings. The 4 th quarter report is set for November 7, 2018.
<u>2. Report Concerning Out-of-State Travel Plans</u> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2019-2020.	January 2019	In progress. A report will be presented for consideration at the January 24, 2019, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	August 2018	<u>Completed</u> At the August 13, 2018, General Meeting, the members were provided with an update concerning the collection of the ACP fees.
<u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed Budget for fiscal year 2018-2019.	August 2018	<u>Completed</u> The 2018-2019 Budget of \$1.8 million was adopted by the Board at the August 13, 2018, General Meeting.
<u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u> Tim Corcoran; Fiscal Committee	In response to Board Member Brooks' request, a memorandum outlining how the Board fees are calculated every year to ensure the fees are not a tax and are cost-justified, will be presented for Board consideration.	August 2018	<u>Completed</u> At the August 13, 2018, General Meeting, this report was made an exception report.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
<u>1. Host Industry Roundtable</u> Tim Corcoran, Dawn Kindel, Danielle Phomsopha; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/distributors, dealers, in-house and outside counsel, associations and other government entities.	September 2019	In progress. A memorandum will be presented at the November 7, 2018, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
POLICY AND PROCEDURE COMMITTEE			
<u>1. Draft Proposed Regulations that Eliminate Association Protests</u> Robin Parker; Policy & Procedure Committee	Assembly Bill 1178 (Stats. 2015, Ch. 526) effective January 1, 2016, established an export or sale-for-resale prohibition policy protest filed by an association in Article 6 of the Vehicle Code. The Board's authority to hear these protests ends on January 1, 2019. The proposed regulatory changes remove references to these provisions in the text and/or authority and reference in Sections 550, 551.8, 551.12, and 590.	November 2018	In progress. The draft proposed regulations will be considered at the November 7, 2018, General Meeting.
<u>2. Revise the Board's Legislation Policy</u> Tim Corcoran; Policy and Procedure Committee	Review and update the Board's current Legislative Policy.	January 2019	In progress. A memorandum will be presented at the January 24, 2019, General Meeting.
<u>3. Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	January 2019	In progress. The updated Guide will be considered at the January 24, 2019, General Meeting.
<u>4. Annual Rulemaking Calendar</u> Danielle Phomsopha; Policy and Procedure Committee	Consideration of the annual rulemaking calendar.	January 2019	In progress. The 2019 Rulemaking Calendar will be considered at the January 24, 2019, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>5. Report on the Assignment of Cases to Board Administrative Law Judges</u> Danielle Phomsopha; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	January 2019	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 24, 2019, General Meeting.
<u>Promulgate Proposed Regulations to Amend the Peremptory Challenge Regulation</u> Danielle Phomsopha; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, amend the peremptory challenge regulation to eliminate the requirement of a declaration of prejudice and use language nearly identical to the Office of Administrative Hearings ("OAH").	January 2019	<u>Completed</u> OAL approved the rulemaking packet and filed it with the Secretary of State October 18, 2018. The regulation is effective January 1, 2019.
<u>Promulgate Proposed Regulations to Add References to Code of Civil Procedure Section 1013b</u> Danielle Phomsopha; Policy and Procedure Committee	In compliance with the Administrative Procedure Act, add references to Section 1013b of the California Code of Civil Procedure to Sections 551.14 (Request for Informal Mediation), 551.24 (Service; Proof of Service); 555.1 (Service of Petition upon Respondent(s)); and 584 (Service of Protest upon Franchisor). These amendments were determined to be substantive by OAL.	January 2019	<u>Completed</u> OAL approved the rulemaking packet and filed it with the Secretary of State October 22, 2018. The regulations is effective January 1, 2019.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
EXECUTIVE COMMITTEE			
1. <u>Review the Board's Legislative Policy</u> Tim Corcoran; Executive Committee	Review the Board's Legislative Policy that was created in 1996 in response to the Audit. Given the layers of communication and potential complexity of some bills, it is important that there be transparency and directness when conveying the Board's analysis to CalSTA. The current policy does not afford the Board the ability to thoughtfully, proactively, and publically examine legislation affecting the Board and its stakeholders.	August 2018	<u>Completed</u> At the August 13, 2018, General Meeting, this matter was referred to the Policy and Procedure Committee for their review and consideration.

B. CASE MANAGEMENT

CASE VOLUME

JULY 30, 2018 THROUGH OCTOBER 22, 2018

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	3	2	9
3060	Modification	0	0	19
3062	Establishment	1	0	2
3062	Relocation	1	0	1
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	2
3065.1	Incentive Program Reimbursement	0	1	10
3070	Termination	0	0	
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-for-Resale	0	0	0
3050(c)	Petition	0	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		5	3	43

PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd.Mtg.	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	CMH	Continued Merits Hearing
RMH	Resumed Merits Hearing	MSC	Mandatory Settlement Conference
CMSC	Continued Mandatory Settlement Conference	RMSC	Resumed Mandatory Settlement Conference
MTCP	Motion to Compel Production	MTC	Motion to Continue
MTD	Motion to Dismiss	PHC	Pre-Hearing Conference
CPHC	Continued Pre-Hearing Conference	RPHC	Resumed Pre-Hearing Conference
PD	Proposed Decision	POS	Proof of Service
PSDO	Proposed Stipulated Decision and Order	ROB	Ruling on Objections
CROB	Continued Ruling on Objections	RROB	Resumed Ruling on Objections
SC	Status Conference	CSC	Continued Status Conference
RFD	Request for Dismissal		
* Consolidated, non-lead case			

Protests

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1. PR-2422-15 3-3-15	Order to Show Cause: 11-16-18	Walter Timmons Enterprises, Inc. dba Timmons Subaru v. Subaru of America, Inc.	P: Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination
2. PR-2470-16 4-23-16	HRC: 5-10-19 MH: 6-24-19 (5 days)	Brown Automotive, Inc. dba Puente Hills Nissan v. Nissan North America, Inc.	P: Victor Danhi R: Mo Sanchez, Kevin Colton	Warranty
3. PR-2475-16 6-21-16 Re-opened 7-3-18	Second PSDO Pending Board Consideration	Sunroad KMI Auto, Inc. dba Kearny Mesa Infiniti, a California corporation v. Nissan North America, Inc., a California corporation	P: Halbert B. Rasmussen R: Steve Kelso, Chris Montville, Bob Davies	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
4. PR-2478-16 8-11-16	Parties working on global settlement	West Covina Nissan, LLC v. Nissan North America, Inc.	P: David N. Tarlow, Ori Blumenfeld R: Gino Bulso, Mo Sanchez, Lisa Gibson, Crispin Collins	Warranty
5. PR-2489-17 1-10-17	All Protestants signed a PSDO	Tulare SAG, Inc., dba Lampe Chrysler Dodge Jeep Ram v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
6. PR-2491-17* 1-13-17	All Protestants signed a PSDO	Central Valley Automotive Inc., dba Central Valley Chrysler Jeep Dodge v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
7. PR-2492-17* 1-18-17	All Protestants signed a PSDO	Ellis Family Stores, LLC, a California limited liability company, dba Fiat of Glendale v. FCA US LLC, a Delaware limited liability company	P: Tim Robinett R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
8. PR-2393-17* 1-18-17	All Protestants signed a PSDO	Mossy Fiat v. FCA, US, LLC	P: Mark H. Nys R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
9. PR-2494-17* 1-18-17	All Protestants signed a PSDO	Mossy Alfa Romeo v. FCA, US, LLC	P: Mark H. Nys R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
10. PR-2497-17* 1-19-17	All Protestants signed a PSDO	SMAG LP dba Santa Maria FCA Dodge Jeep Ram Fiat v. Fiat Chrysler Automobiles US, LLC	P: Christian Scali, Bert Rasmussen R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
11. PR-2499-17* 1-19-17	All Protestants signed a PSDO	Stevens Creek Luxury Imports, Inc. dba AutoNation Alfa Romeo Stevens Creek v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
12. PR-2501-17 1-19-17	Case is tracking corresponding Alfa Romeo/Fiat matters	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
13. PR-2502-17* 1-20-17	All Protestants signed a PSDO	Baker Motors, Inc., a California corporation, dba Bob Baker Fiat v. FCA US LLC, a Delaware limited liability company	P: Wade W. Paulson R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
14. PR-2503-17* 1-20-17	All Protestants signed a PSDO	Baker Motors, Inc., a California corporation, dba Bob Baker Fiat Alfa Romeo v. FCA US LLC, a Delaware limited liability company	P: Wade W. Paulson R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
15. PR-2504-17* 1-23-17	All Protestants signed a PSDO	Costa Arancione, LLC, a California limited liability company, dba Orange Coast Alfa Romeo and Fiat v. FCA, LLC	P: Gregory Ferruzzo R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
16. PR-2505-17* 1-23-17	All Protestants signed a PSDO	Costa Arancione, LLC, a California limited liability company, dba Orange Coast Alfa Romeo and Fiat v. FCA, LLC	P: Gregory Ferruzzo R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
17. PR-2506-17* 1-23-17	Case is tracking corresponding Alfa Romeo/Fiat matters	Rusnak/Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
18. PR-2507-17* 1-23-17	All Protestants signed a PSDO	Rusnak/Pasadena dba Rusnak Alfa Romeo v. FCA US LLC	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
19. PR-2511-17* 1-23-17	All Protestants signed a PSDO	Niello Italian Imports, Inc., dba Niello Alfa Romeo v. FCA US LLC	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
20. PR-2512-17* 1-23-17	Case is tracking corresponding Alfa Romeo/Fiat matters	Niello Italian Imports, Inc., dba Niello Maserati v. Maserati North America, Inc.	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
21. PR-2514-17 2-2-17	All Protestants signed a PSDO	HWM Auto Corp., dba McKevitt Fiat of Berkeley v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
22. PR-2515-17 2-2-17	All Protestants signed a PSDO	HWM Auto Corp., dba McKevitt Alfa Romeo v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
23. PR-2518-17 4-3-17	RSC: 11-5-18	Shingle Springs Imports, Inc. dba Shingle Springs Honda v. American Honda Motor Co., Inc.	P: Gavin Hughes, Robert Mayville R: Patricia Britton, S. Keith Hutto, Steve McKelvey, Steven McFarland	Termination
24. PR-2526-17 8-11-17	ROB: 3-29-19 HRC: 6-21-19 MH: 8-5-19 (15 days)	HTMC, LLC, dba Subaru El Cajon v. Subaru of America, Inc.	P: Gavin Hughes, Robert Mayville R: Maurice Sanchez, Lisa M. Gibson	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
25. PR-2539-17 10-13-17	HRC: 1-4-19 MH: 2-4-19 (15 days)	Barber Group, Inc., a California corporation doing business as Barber Honda v. American Honda Motor Co., Inc., a California corporation	P: Grover H. Waldon, Charles D. Melton, Gavin Hughes, Robert Mayville R: Patricia Britton, S. Keith Hutto, Steven B. McFarland I: Alan Skobin, John Tuell	Establishment
26. PR-2542-17 11-13-17	PHO vacated pending arbitration in court action IFU: 2-1-19	Putnam Automotive, Inc., dba Putnam Subaru v. Subaru of America, Inc.	P: Gavin Hughes, Robert Mayville R: Mo Sanchez, Lisa Gibson	Modification Satellite Warranty Facility
27. PR-2553-18 1-26-18	PHO vacated pending arbitration in court action IFU: 2-1-19	Putnam Automotive, Inc., dba Putnam Subaru v. Subaru of America, Inc.	P: Gavin Hughes, Robert Mayville R: Mo Sanchez, Lisa Gibson	Termination Satellite Warranty Facility
28. PR-2559-18 3-16-18	HRC: 4-19-19 MH: 6-3-19 (10 days)	Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek (Jaguar) v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
29. PR-2560-18* 3-16-18	HRC: 4-19-19 MH: 6-3-19 (10 days)	Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek (Land Rover) v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
30. PR-2561-18* 3-16-18	HRC: 4-19-19 MH: 6-3-19 (10 days)	ARBM, Inc., dba Jaguar Livermore v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
31. PR-2562-18* 3-16-18	HRC: 4-19-19 MH: 6-3-19 (10 days)	ARBM, Inc., dba Land Rover Livermore v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
32. PR-2563-18* 3-16-18	HRC: 4-19-19 MH: 6-3-19 (10 days)	British Motor Car Distributors, LTD., dba Jaguar San Francisco v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
33. PR-2564-18* 3-16-18	HRC: 4-19-19 MH: 6-3-19 (10 days)	British Motor Car Distributors, LTD., dba Land Rover San Francisco v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
34. PR-2565-18 4-4-18	HRC: 11-2-18 MH: 12-3-18 (5 days)	Burger Auto Group, LLC, dba Carl Burger Dodge Chrysler Jeep Ram World (Chrysler) v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Mark T. Clouatre, John P. Streelman, Crispin Collins	Franchisor Incentive
35. PR-2566-18* 4-4-18	HRC: 11-2-18 MH: 12-3-18 (5 days)	Burger Auto Group, LLC, dba Carl Burger Dodge Chrysler Jeep Ram World (Dodge) v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Mark T. Clouatre, John P. Streelman, Crispin Collins	Franchisor Incentive
36. PR-2567-18* 4-4-18	HRC: 11-2-18 MH: 12-3-18 (5 days)	Burger Auto Group, LLC, dba Carl Burger Dodge Chrysler Jeep Ram World (Jeep) v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Mark T. Clouatre, John P. Streelman, Crispin Collins	Franchisor Incentive
37. PR-2568-18* 4-4-18	HRC: 11-2-18 MH: 12-3-18 (5 days)	Burger Auto Group, LLC, dba Carl Burger Dodge Chrysler Jeep Ram World (Ram) v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Mark T. Clouatre, John P. Streelman, Crispin Collins	Franchisor Incentive

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
38. PR-2569-18 4-26-18	ROB: 11-13-18 Evidence submission and Protestant's Brief: 1-7-19 Respondent's Opposition: 1-22-19 Protestant's Reply: 1-29-19	RV's-4-Less, Inc., dba RVs 4 Less v. Eclipse Recreational Vehicles, Inc.	P: Gavin Hughes, Robert Mayville R: Frederick Kosmo, Jr., Beth Wendle	Termination
39. PR-2570-18 8-22-18	Parties setting schedule IFU: 10-24-18	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	P: Gavin Hughes, Robert Mayville R: Mo Sanchez, Lisa Gibson, Crispin Collins	Termination
40. PR-2571-18 9-6-18	Proceedings stayed until Ford Appeal complete. SC: 12-3-18	Cevera Automotive Group, LLC dba Veracom Ford v. Ford Motor Company	P: Robert Branzuela, Philip Branzuela, pro per R: Mark Joseph Kennedy, Duane M. Geck, Donald J. Cram	Termination
41. PR-2572-18 9-13-18	SC: 10-23-18	PB&J Automotive, Inc., dba Tustin Mazda v. Mazda Motor of America, Inc.	P: Gavin Hughes, Robert Mayville R: Maurice Sanchez, Lisa Gibson, Crispin Collins	Relocation
42. PR-2573-18 9-18-18	Notice issued; new protest to be filed. IFU: 11-14-18	First Priority Bus Sales, LLC, a New Jersey Limited Liability Company v. The Lion Electric Co., a Canadian corporation, fka Lion Bus Inc.	P: Bert Rasmussen R: Colm Moran	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
43. PR-2574-18 9-21-18	Parties setting MSC with Judge Wong	Romero Motors Corporation, a California corporation, dba Ontario Hyundai v. Hyundai Motor America	P: Timothy D. Robinett, Wade R. Kackstetter R: Mark T. Clouatre, John P. Streelman, Jake F. Fischer, Crispin Collins	Establishment

Petitions

CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
		-----None Pending----	

Appeals

CASE NUMBER/ DATE FILED	STATUS	APPEAL	COUNSEL
		-----None Pending----	

C. JUDICIAL REVIEW

Judicial Review

Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure, § 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure, § 1084).

1. GENERAL MOTORS LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; FOLSOM CHEVROLET, INC. d/b/a FOLSOM CHEVROLET, Real Party in Interest
Los Angeles County Superior Court BS175257
New Motor Vehicle Board No. CRT-276-18
Protest No. PR-2483-16

At the August 13, 2018, General Meeting, the Public Members of the Board adopted ALJ Evelyn Matteucci's Proposed Decision as amended as the Board's final Decision. The Decision sustained the protest and did not permit GM to terminate the protesting dealer's Chevrolet franchise.

On September 27, 2018, General Motors LLC (GM) filed a Petition for Writ of Administrative Mandate. GM contends that in adopting the Proposed Decision, the Board exceeded its jurisdictional authority and committed numerous prejudicial abuses of discretion. GM seeks a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and adopt a new and different decision overruling the protest or, in the alternative, to strike down the termination provisions of Sections 3060 and 3061 of the Vehicle Code as unconstitutional on their face and/or as applied. The Board received the writ on October 3, 2018. A copy of the record has been requested and is being copied.

GM contends that: (1) The Board, by its own admission, has never allowed a sales-based termination of a dealer agreement, unless it was accompanied by other grounds for termination; (2) The findings in the Decision are not supported by substantial evidence, its conclusions are not supported by its findings, and it failed to proceed in a manner required by law; (3) The ALJ altered the language of subdivision (g) of Section 11713.3 in order to "broadly and generally find RSI [retail sales index] unreasonable—a conclusion that neither the ALJ nor the Board had jurisdiction to make;" (4) There was no meaningful opportunity to rebut the Proposed Decision; (5) The Decision "invents impossible qualifications on GM's sales performance standards, gutting the terms of valid and binding contracts GM entered into with all of its Chevrolet dealers;" (6) The Board's longstanding refusal to approve sales-based terminations constitutes an underground regulation that cannot be enforced under controlling law and that precludes any claim that the Board is an impartial tribunal in termination cases; and, (7) The language and application of the Vehicle Code's termination provisions are unconstitutional under both the California and United States Constitution, violating basic due process and equal protection rights.

Kathryn Doi, Vice President and Attorney Member, determined there is a State interest at issue in the writ so the Board will participate via the Attorney General's Office. The writ challenges the Board's jurisdiction and could affect future Board cases. Michael Gowe, Deputy Attorney General, has been retained to represent the Board.

2. ASIAN PACIFIC INDUSTRIES, INC., dba JAGUAR LAND ROVER STEVENS CREEK; ARBM, INC., dba JAGUAR LIVERMORE and LAND ROVER LIVERMORE; and BRITISH MOTOR CAR DISTRIBUTORS, LTD., dba JAGUAR SAN FRANCISCO and LAND ROVER SAN FRANCISCO v. CALIFORNIA NEW MOTOR VEHICLE BOARD; JAGUAR LAND ROVER NORTH AMERICA, LLC, Real Party in Interest
California Superior Court, Sacramento County Case No. 34-2018-80002866
New Motor Vehicle Board No. CRT-275-18
Protest Nos. PR-2530-17, PR-2532-17, PR-2544-17, PR-2546-17, PR- 2548-17 and PR-2550-17

At the March 13, 2018, General Meeting, the Public Members adopted as amended ALJ Anthony M. Skrocki's Proposed Order Granting Motion of Respondent Jaguar Land Rover North America, LLC (JLRNA) to Dismiss for Lack of Jurisdiction. The six modification protests were dismissed with prejudice and the six incentive protests were dismissed without prejudice. The incentive protests are not at issue in the writ.

The modification protests were based upon claims by the Protestants that the Business Builder Bonus Program ("BBBP") is part of their franchises so modification of the BBBP constitutes modification of their franchises, that the modifications of their franchises substantially affect their sales or service obligations or investment, and that JLRNA failed to provide the notices to the Protestants and the Board as required by Vehicle Code section 3060(b).

For the Board to have jurisdiction to hear and consider a modification protest there must be: (1) A modification of the "franchise"; and, (2) the modification must substantially affect the franchisee's sales or service obligations or investment. The ALJ found that the franchises for Jaguar and Land Rover vehicles consist of the Dealer Agreement and the Standard Provisions for Jaguar or Land Rover and the Performance Agreement for Jaguar or the Letter of Intent for Land Rover. However, the ALJ found that the terms of the BBBP (an incentive program) are not part of either franchise, so modification of the BBBP does not constitute modification of the franchise.

On April 11, 2018, Petitioners filed and served a Joint Verified Petition for Writ of Administrative Mandate and Writ of Traditional Mandate in Sacramento County Superior Court.

Petitioners seek a writ of administrative mandate or alternatively traditional mandate directing the Board to set aside and vacate its Decision dated March 13, 2018, as it relates to the modification protests and to adopt and issue a new

and different decision denying JLRNA's motion to dismiss or alternatively hear additional evidence related to whether the BBBP is part of Petitioners' franchises.

Petitioners contend that the Board abused its discretion because the Board's findings are not supported by the evidence, the Board's Decision is not supported by the findings, and the Board's hearing did not proceed in a manner required by law. Petitioners argue that the Board ignored the fact that the Performance Agreement and Letter of Intent are explicitly part of and incorporated into both the Jaguar and Land Rover Dealer Agreements. This evidences that the BBBP is part of each dealers' franchise. Furthermore, Petitioners argue that the BBBP significantly influences the pricing and sale of vehicles, reduces margins between invoice and MSRP, participation is required, and each iteration of the program is a "modification of material terms of the franchises." Lastly, Petitioners maintain that the Board abused its discretion and made errors of law in dismissing their arguments that "JLRNA's efforts to modify its pricing according to the BBB Program violates the covenant of good faith and fair dealing..."

Kathryn Doi, Vice Board President, has determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

JLRNA filed its Verified Answer on May 14, 2018. The hearing is on January 11, 2019, at 11:00 a.m. in Department 28.

3. NISSAN NORTH AMERICA, INC. v. NEW MOTOR VEHICLE BOARD; WEST COVINA NISSAN, LLC, Real Party in Interest
California Superior Court, Orange County Case No. 30-2017-00956529
New Motor Vehicle Board No. CRT-274-17
Protest No. PR-2478-16

On October 30, 2017, ALJ Woodward Hagle issued an "Order Denying Respondent's Motion to Dismiss Protest for Lack of Jurisdiction after Sale of Dealership Assets." The issue in this motion was: "does the Board retain jurisdiction to hear and decide a warranty reimbursement claims protest pursuant to Section 3065 after a transaction which divested protestant of its dealership?" This was a case of first impression. The ALJ determined that Respondent "failed to meet its burden of proof. The Board has continuing jurisdiction over the protest and may render a Decision in the matter, despite the fact that West Covina Nissan is no longer a Nissan dealer. Not only did all events alleged in the protest occur while protestant was a Nissan dealer, but the warranty reimbursement claims protest and protest procedures are within the Board's exclusive statutory authority. The matter has been pending since August 11, 2016 and discovery has not been stayed. The Board has special expertise in these matters to adjudicate the claim." Since the order was not dispositive of the protest, it was not considered by the Public Members.

On November 17, 2017, Nissan North America, Inc. ("Nissan") filed a Petition for Writ of Administrative Mandate in the Orange County Superior Court; the Board was served on November 20, 2017. Nissan argues that no court has ruled and

no statute provides that the Board may adjudicate disputes between a former franchisee and its former franchisor. Nissan contends the ALJ's Order is wrong because the Board has no jurisdiction to decide any matter not involving a current dealer/franchisee and that when West Covina Nissan sold its Nissan dealership, it lost the ability to appear before the Board. It further argues that the Court has jurisdiction in this matter under two exceptions to the doctrine of exhaustion of administrative remedies.

Kathryn Doi, Vice President and Attorney Member, determined there is a State interest at issue in the writ so the Board will participate via the Attorney General's Office. The writ challenges the Board's jurisdiction and could affect future Board cases. Michael Gowe, Deputy Attorney General, has been retained to represent the Board.

Nissan's Ex Parte Motion to Stay was denied on November 28, 2017. Nissan also filed a Motion to Stay that was heard on January 8, 2018, and ultimately denied. The Board's answer was filed February 2, 2018.

A case management conference set for April 23, 2018, was continued to April 30, 2018, to allow the filing of the administrative record and counsel were ordered to meet and confer on a trial date and briefing schedule. The parties proposed: Petitioner's opening brief due May 11, 2018; Respondent and/or Real Party in Interest's opposition due May 31, 2018; Petitioner's reply brief due June 11, 2018. The hearing is tentatively set for Monday, June 25, 2018, at 1:30 p.m. in Department C31.

On May 8, 2018, Nissan filed a Notice of Conditional Settlement so the parties could avoid filing the briefs in response to the writ. This matter should be dismissed no later than August 6, 2018. On June 25, 2018, the Court issued a minute order setting an Order to Show Cause re: Dismissal of Settled Case for September 24, 2018, at 11:00 a.m. in Department C31. *Since the parties have not finalized a settlement agreement, the Court ordered a second order to show cause hearing on November 26, 2018, at 11:00 a.m.*

4. FIAT CHRYSLER AUTOMOBILES US LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; DEPENDABLE DODGE, INC., Real Party in Interest
California Superior Court, Sacramento County Case No. 34-2017-80002584
New Motor Vehicle Board No. CRT-273-17
Protest Nos. PR-2435-15 and PR-2436-15

At the March 15, 2017, General Meeting, the Public Members of the Board adopted ALJ Kymberly Pipkin's Proposed Decision as the Board's final Decision. The Decision sustained the consolidated Protests and did not permit FCA to terminate Dependable's RAM and Dodge franchises. On April 24, 2017, Fiat Chrysler Automobiles US, LLC's ("FCA") filed a "Petition for Writ of Administrative Mandate and Writ of Traditional Mandate." FCA contends that the ALJ denied it a fair hearing and prejudicially abused her discretion by failing to proceed in the manner required by law, making findings unsupported by substantial evidence, and reaching a decision unsupported by findings.

FCA seeks: (1) issuance of a writ of administrative mandamus or alternatively traditional mandate, directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision overruling Dependable's protests and allowing the termination of its FCA Dealer Agreements. Alternatively, (2) issuance of a writ of administrative mandamus or traditional mandate, directing the Board to set aside and vacate its Decision and to order a new hearing with a new ALJ.

Kathryn Doi, Vice Board President, has determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

Dependable Dodge, Inc., ("Dependable") filed its answer on May 30, 2017. This matter is fully briefed. The hearing was set for January 26, 2018, at 9:00 a.m. in Department 28.

On January 22, 2018, the Court vacated the January 26, 2018 hearing on the petition for writ of mandate due to Petitioner's lodging of a significant portion of the administrative record under conditional seal pending the Motion to Seal Court Records. The motion to seal originally set for March 16 was heard April 20, 2018, at 10:00 a.m. in Department 28. The Court denied the motion without prejudice because it was not narrowly tailored. The Court made no determination as to whether Petitioner waived its right to request sealing as to some or all of the documents requested to be sealed.

On May 10, 2018, FCA filed a Renewed Motion to Seal Court Records Pursuant to California Rules of Court 2.550 and 2.551. FCA contends the record contains information that is subject to the attorney client and work product privileges. FCA maintains that it reduced the number of pages requested to be sealed by roughly 75% from its original motion. It contends this motion should be granted since the request to seal is narrowly tailored to only those pages that discuss or reference the Market Study. The Court denied the motion without prejudice with regard to documents 1 through 16 on the basis that the request is not narrowly tailored as required by Rule 2.550, subdivision (d) and emphasized by subdivision (e). With regard to the Market Study itself, the Court deferred ruling on the motion and will retain the Market Study conditionally under seal pursuant to Rule 2.551(b)(4) pending a hearing on the merits, at which time the Court will evaluate and rule on Petitioner's argument that the Market Study is privileged. The Court defers such ruling on this motion as it is inextricably intertwined with the central issue on the merits of the petition.

The hearing on the writ was set for June 15, 2018, at 10:00 a.m. in Department 28. However, the Renewed Motion to Seal Court Records was heard instead on June 15. On June 25, 2018, the Court denied the motion without prejudice with regard to specified documents 1-16 on the basis the request was not narrowly tailored. With regard to the Market Study, the Court deferred ruling on the motion and retained the Market Study under seal pending the hearing on the merits at which time the Court will evaluate and rule on FCA's argument that the Market

Study is privileged. The hearing on the writ is set for November 16, 2018, at 11:00 a.m. in Department 28.

D.

NOTICES FILED

PURSUANT TO
VEHICLE CODE SECTIONS
3060/3070 AND 3062/3072

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS 3060/3070 AND 3062/3072

JULY 31, 2018 THROUGH OCTOBER 22, 2018

These are generally notices relating to termination or modification (sections 3060 and 3070) and establishment, relocation, or off-site sales (sections 3062 and 3072).

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW (includes Mini)	
FCA (Chrysler, Jeep, Dodge, RAM)		FCA (Chrysler, Jeep, Dodge, RAM)	
FCA (Alfa Romeo, FIAT)		FCA (Alfa Romeo, FIAT)	
FCA (Maserati)	1	FCA (Maserati)	
FERRARI		FERRARI	
FORD	1	FORD	1
GM		GM (Buick)	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI		HYUNDAI	1
INFINITI		INFINITI	
JAGUAR		JAGUAR	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA	1	MAZDA	1
MERCEDES		MERCEDES	
MINI		MINI	
NISSAN		NISSAN	
POLARIS		POLARIS	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SUBARU	1	SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	1	MISCELLANEOUS	
TOTAL	5	TOTAL	3